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September 28, 2016

VIA E-MAIL

The Honorable Martin Glenn
United States Bankruptcy Court
for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *Motors Liquidation Company Avoidance Action Trust* v. *JPMorgan Chase Bank, N.A., et al.*, No. 09-00504 (MG) (Bankr. S.D.N.Y.)

Dear Judge Glenn:

We represent defendant JPMorgan Chase Bank, N.A. ("JPMorgan") in the above-captioned adversary proceeding. We write jointly with the other members of the Defendants' Steering Committee (Jones Day, Munger Tolles, Hahn & Hessen, Kasowitz Benson, and Davis Polk) as well as counsel to the Plaintiff, Motors Liquidation Company Avoidance Action Trust, to update the Court in advance of the status conference scheduled for 4:30 p.m. on September 28, 2016.

After meeting and conferring, the parties have reached substantial agreement on a proposed schedule for trial on the 40 Representative Assets as well as other outstanding issues. Among other things, the parties jointly request a brief extension of the fact discovery deadline to complete depositions, which likely will not be complete by the existing deadline of October 14, 2016 due to the unavailability of third party witnesses.

I. Proposed Schedule for 40 Representative Assets Trial and Pre-Trial Proceedings

Oct. 31, 2016	Completion of fact discovery for Representative Assets and affirmative defenses/issues not covered by the Court's June 22 Scheduling Order (hereinafter, "certain affirmative defenses/issues")[1]
Nov. 21, 2016	Initial expert reports due for Representative Assets and certain affirmative defenses/issues
Dec. 21, 2016	Rebuttal expert reports due for Representative Assets and certain affirmative defenses/issues
Jan. 27, 2017	Expert depositions completed; close of discovery for 40 Representative Assets
Feb. 3, 2017	Letters to the Court as to whether any of the proposed issues set out in Part II below for possible discrete resolution should be briefed and decided prior to, or concurrently with but separate from, trial on the 40 Representative Assets. The parties shall propose a schedule for briefing any such issues in their letters. Defendants also reserve the right to submit a letter to the Court on or before this date reiterating their request that the Court participate in plant visits as part

[1] As set forth in the Stipulation and Order Amending and Supplementing Order Regarding Discovery and Scheduling (ECF Doc. # 153) [Dkt. No. 634] entered on June 22, 2016 (the "June 22 Scheduling Order"), discovery, briefing and trial "concerning the circumstances of the filing of the UCC-3 at issue in this action" will be completed on the same schedule as discovery relating to the cross-claims. This proposed schedule is not intended to modify the June 22 Scheduling Order; instead, it is intended to address discovery and proceedings relating to certain specific affirmative defenses/issues not covered by the June 22 Scheduling Order. Plaintiff and the Defendants Steering Committee are currently in discussions about possible alterations to the discovery schedule in the June 22 Scheduling Order and will be prepared to update the Court on that issue at the conference.

	of the 40 Representative Assets trial.
Mar. 1, 2017	Pre-trial briefs. The pre-trial briefs will address the fixture status and value of the forty representative assets selected by the parties. The pre-trial briefs will also address any of the proposed issues set out in Section II.A through II.C below that the Court determines should be included in the 40 Representative Assets trial.
Mar. 8, 2017	Pre-trial motions in limine (if any)
Mar. 22, 2017	Opposition to pre-trial motions in limine (if any)
Mar. 31, 2017	Replies to pre-trial motions in limine (if any)
April 2017	Pre-trial conference on date selected by Court
April 24, 2017 or other date selected by the Court	Trial — likely 8-10 days, on dates selected by Court
2 Weeks After Decision on Representative Assets	Parties meet and confer as to next steps, including discussing the possibility of mediation, and report to the Court as to the parties' intention expeditiously thereafter Parties also meet and confer as to the appropriateness of summary judgment on any of the remaining affirmative defenses and report to the Court with a proposal for any such motions, including a briefing schedule, expeditiously thereafter
Date to be determined by the Court	Trial on any remaining affirmative defenses that would aid in the resolution of the action

II. Issues that May be Suitable for Discrete Resolution

The parties agree that the following issues may be suitable for resolution on summary judgment, or during the trial on the 40 Representative Assets:

A. Whether the defendants had a perfected security interest in the fixtures at the Lansing Delta Township Stamping and Assembly facilities as of June 1, 2009.

B. Whether the Term Loan collateral includes the equipment and fixtures at nine additional facilities (GM MFD Flint, GM MFD Lansing Regional Stamping, GM MFD Lordstown, GM MFD Fairfax, Powertrain Engineering Building, Powertrain Engineering Pontiac, Powertrain Headquarters, SPO Pontiac, and Powertrain Moraine Engine), and whether the 26 fixture filings perfected the Term Lenders' security interest in the fixtures at those nine additional facilities. Plaintiff's view is that, for purposes of this phase of the case, this issue should be limited to GM MFD Lansing Regional Stamping.

C. Whether the leased assets included among the 40 Representative Assets are fixtures in which the Term Loan Lenders had a perfected security interest.

All parties also reserve the right to seek leave to move for summary judgment on any of the Defendants' affirmative defenses or any other issues any time after the close of the relevant discovery period. All parties reserve the right to oppose any such request.

Plaintiff plans to seek leave to move for summary judgment dismissing the affirmative defenses of constructive trust and earmarking, and as to the issue of the effectiveness of the UCC-3. Defendants believe that some or all of these issues will likely involve disputed issues of fact, will not be amenable to summary judgment, and should be addressed after the 40 Representative Assets trial and after the parties have had an opportunity to meet and confer as to next steps, including the possibility of mediation or other settlement negotiations. If the Court finds that these issues are not amenable to summary judgment, or that any summary judgment proceedings on those issues should not occur prior to 40 Representative Assets trial, then summary judgment proceedings and/or, as necessary, a trial will be held on those issues at such time as the Court determines after the trial on the 40 Representative Assets has concluded. The parties agree that none of the affirmative defenses or other issues discussed in this paragraph should be addressed during the 40 Representative Assets trial. Defendants reserve their right to oppose any summary judgment phase before the 40 Representative Assets trial, including on the ground that requiring the parties and the Court to devote time to these issues at that stage will distract from, and potentially delay, the 40 Representative Assets trial.

III. Remaining Issues to be Addressed If Necessary Following Decision on Representative Assets/Parties' Meet and Confer

The parties agree that the following issues should not be addressed in connection with 40 Representative Assets trial, and can be addressed if necessary following that trial:

A. Categorization/valuation of remaining assets.

B. Whether remaining leased assets are fixtures in which the Term Lenders had a perfected first priority security interest.

C. All remaining affirmative defenses asserted by defendants (including, but not limited to, mere conduit, statute of limitations, estoppel, etc.).

D. All remaining cross-claim issues, including dispositive motions on cross-claims.

E. Any other issues necessary to a complete resolution of the action.

We look forward to discussing this proposal and any questions or concerns Your Honor has at the September 28, 2016 conference.

Respectfully submitted,

Marc Wolinsky

cc: Eric Fisher, Esq.
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